

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing amendment of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. The Secretary has also determined that this emergency clearly poses such an immediate, serious harm that delaying action by providing five working days advance notice to allow public comment would be inconsistent with the public interest, within the meaning of Government Code Section 11346.1(a)(3). Further, the Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action by the Office of Administrative Law providing five calendar days advance notice to allow public comment would also be inconsistent with the public interest, within the meaning of Government Code Section 11349.6(b).

Specific Facts Showing the Need for Immediate Action

Mexican fruit fly is a destructive insect pest of innumerable commercial agricultural crops. Many kinds of fruit, including apple, apricot, avocado, citrus (except lemon and sour lime), guava, nectarine, peach, pear, plum, and pomegranate, and the fruiting bodies of some wild and ornamental plants are known to be hosts or possible hosts of the Mexican fruit fly. Larval feeding reduces the interior of fruit to a rotten mass. Egg punctures admit decay organisms that cause tissue breakdown. Damaged fruit is generally unfit for human consumption. Movement of hosts infested with the larvae of the fly can artificially spread the fly.

On December 8, 2008, a mated female Mexican fruit fly (Pest and Damage Record #1443080) was detected in the Azusa area of Los Angeles County. The detection of a mated female Mexican fruit fly is indicative of an incipient infestation of Mexican fruit fly in the Azusa area of Los Angeles County. On December 10, the Los Angeles County

Agricultural Commissioner requested that the Secretary implement a quarantine to mitigate the spread of Mexican fruit fly in Los Angeles County.

The proposed quarantine area includes the initial property as the epicenter and a buffer zone extending approximately 4-1/2 miles in each direction from this epicenter. A buffer zone is necessary because the fly can spread naturally (as well as artificially in infested hosts). The boundary line was drawn jointly by the United States Department of Agriculture, the California Department of Agriculture, and the Los Angeles County Agricultural Commissioner and is considered the minimum area around the infested properties that should be regulated to prevent artificial spread of Mexican fruit fly to noninfested areas.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to increased pesticide use, decreased production of marketable fruit, and loss of markets if the United States Department of Agriculture or other states or countries enact a quarantine against California products which can host and carry the fly. It is estimated that the establishment of Mexican fruit fly could cost an additional \$124 million per year in increased production costs. Mexican fruit fly has been introduced into California a number of times, through the movement of prohibited host fruits and vegetables into the State, and has always been successfully eradicated.

This proposed amendment of Section 3417(b) will establish approximately 70 square miles surrounding the infestation in the Azusa area of Los Angeles County as the area under quarantine for Mexican fruit fly. To prevent artificial spread of the fly to noninfested areas to protect California's agricultural industry, it is necessary immediately to regulate movement of hosts that can carry the fly from, into and within the infested area and a surrounding buffer area. Therefore, it is necessary to amend this regulation to establish a new quarantine area in the Azusa area of Los Angeles County as an emergency action.

The Department also relied upon the following document for this proposed emergency action:

“Action Plan for Mexican Fruit Fly, *Anastrepha ludens* (Loew),” revised April 2004, California Department of Food and Agriculture.

Authority and Reference Citations

Section 3417(b):

Authority: Sections 407, 5301, 5302 and 5322, Food and Agricultural Code.

Reference: Sections 5301, 5302 and 5322, Food and Agricultural Code.

Informative Digest

Existing law provides that the Secretary may establish, maintain, and enforce such regulations as he deems necessary to protect the agricultural industry of California from the spread of pests. The Secretary may make and enforce such regulations as he deems necessary to prevent any plant or thing which is, or is liable to be, infested by or which might act as a carrier of any pest, from passing over any quarantine boundary which is established. The purpose of this proposed emergency amendment is to facilitate the eradication of the Mexican fruit fly infestation by limiting it to the present area. This proposed emergency amendment is necessary to protect California’s agricultural industry.

Section 3417. Mexican Fruit Fly Interior Quarantine.

This amendment will add approximately 70 square miles in the Azusa area of Los Angeles County to the quarantine area for Mexican fruit fly. The effect of the amendment is to provide authority for the State to regulate movement of hosts and possible carriers of Mexican fruit fly within and from the Azusa area, because it is necessary to protect California's agricultural industry.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3417 does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Los Angeles County Agricultural Commissioner requested the change in regulation.

Cost Estimate

The Department has also determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.